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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,174	08/20/2003	Susan Crawford Pope	65448 84753	5715

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 05/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



**Office Action Summary**

Application No.

10/644,174

Applicant(s)

POPE, SUSAN CRAWFORD

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

*Ant Tan*  
*Prim Exam 3643*

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/24/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.



## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-9,13-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5287826 (herein 826) in view of US 6192621 (herein 621).

For claims 1-3,6, 826 discloses an article useful for attracting canines and for inducing the canines to eliminate in a vicinity where the article is placed, the article comprising a polymeric body with a canine attractant material that further comprises an active ingredient capable of inducing the canine to eliminate (throughout patent, esp. col. 5, line 68 and col. 6, lines 1-8). However, 826 is silent about the specific body with at least one surface or cavity and the article is a lawn stake with cap and stake portions.

621 teaches a lawn stake with a body 50 having a cavity 78, cap 60 and stake 54 portions, the body holds an attractant 76 in the cavity of the stake to attract desired animals (col. 1, line 55, col. 3, lines 53-67). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a stake article with a body with a cavity, cap and stake portions as taught by 621 as the preferred polymeric article of 826 in order to contain the attractant material and to allow the article to be inserted into the ground.



For claims 4 & 5, in addition to the above, 826 as modified by 621 (emphasis on 826) teaches that the polymeric body, in this case, the stake, be coated or impregnated with the attractant material (col. 5, line 68 and col. 6, lines 1-8).

For claim 7, 826 as modified by 621 (emphasis on 621) teaches a cover 60 over the cavity.

For claim 8, 826 as modified by 621 (emphasis on 621) teaches the cover 60 being connected to the body by cap posts 74 instead of a hinge. It would have been an obvious substitution of functional equivalent to substitute the cap posts of 826 as modified by 621 (emphasis on 621) with a hinge, since both types of connecting member would perform to allow the cover to be removable.

For claim 9, 826 as modified by 621 (emphasis on 621) teaches the cavity is vented through the top opening of the body.

For claim 13, 826 as modified by 621 (emphasis on 826) teaches the attractant material coating or impregnating the polymeric body (col. 5, line 68 and col. 6, lines 1-8), thus making the material a coating.

For claims 14-16, 826 as modified by 621 (emphasis on 621) teaches the body being injection molded (col. 5, line 11) into one unit together forming the stake.

For claim 17, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ p-cresyl acetate and/or phenyl acetic acid as the preferred active ingredient in the article of 826 as modified by 621, depending on how potent one wishes the attractant material to be.



For claim 18, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the article of 826 as modified by 621 out of thermoplastics, fiberglass or nylon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

For claims 19-21, 826 as modified by 621 (emphasis on 621) teaches the body is attachable to a support surface such as the ground or a window sill, which is the substantially flat surface, by using plate 77 with nail holes 79 (col. 5, lines 48-50).

3. **Claims 10-12** are rejected under 35 U.S.C. 103(a) as being unpatentable over 826 as modified by 621 as applied to claim 1 above, and further in view of US 6531145 (herein 145). 145 teaches an attractant material for training dogs, the material comprises solids which include active ingredient to entice the dogs. The solids are microspheres or microporous beads 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ solids in microspheres which include active ingredient to entice the dogs as taught by 145 as the attractant material in the article of 826 as modified by 621 in order to provide easier handling since the attractant material is in solid form.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a



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general nature or relating to the status of this application or proceeding should be directed to Customer Service at (703) 872-9325. The official fax number is 703-872-9306.



Son T. Nguyen

Primary Examiner, GAU 3643

May 14, 2004